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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

FLOYD N. TREBIL,

Plaintiff and Appellant,

v.

BOARD OF RETIREMENT OF THE
ORANGE COUNTY EMPLOYEES'
RETIREMENT SYSTEM,

Defendant and Respondent.

G041664

(Super. Ct. No. 30-2008-00107072)

O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Franz E. Miller, Judge. Affirmed.

The Law Offices of Villalobos & Associates and Edward A. Villalobos for Plaintiff and Appellant.

David H. Lantzer for Defendant and Respondent.

Floyd Trebil appeals from a summary judgment entered against him on his petition for a writ of administrative mandamus. The court granted the summary judgment on the ground that Trebil's petition was filed beyond the 90-day time limit specified in Code of Civil Procedure section 1094.6, and Trebil concedes this is true. But he argues that, in fairness, his time to file the petition should have been extended five additional days, to account for the fact that notice of the decision he sought to overturn had been served upon him by mail, rather than personally delivered. Trebil makes this argument despite the fact the statute itself explicitly rejects any such extension. He contends the statute's specific rejection of the extension cannot be reconciled with the general rule affording such extensions, which is set forth in Code of Civil Procedure section 1013.¹

We can offer no relief from the judgment. The Legislature imposed a specific, jurisdictional time limitation in section 1094.6, and stated clearly that in a case such as this, the time period would commence running when the notice of decision was *mailed*. It then went further, and expressly *ruled out* any extension of that time limitation based upon section 1013. Because the Legislature explicitly decreed that section 1013 is inapplicable to the time limitations created by section 1094.6, those statutes do not conflict and there is no inconsistency to be reconciled.

The judgment is affirmed.

FACTS

The essential facts in this case are undisputed.² Trebil, a county employee, filed an application for a service connected disability retirement. The Board of Retirement of the Orange County Employees' Retirement System (the Board) rendered a

¹ All further statutory references are to the Code of Civil Procedure.

² Trebil's brief includes no statement of facts, and its "Introduction" section, which does include a description of the factual context in which this appeal arises, is devoid of any citations to the record. Such an omission violates California Rules of Court, rule 8.204, subdivision (a), and would justify an order striking the brief. However, we choose to disregard the noncompliance in this case, as the legal issue raised can be resolved without significant factual analysis.

final decision denying Trebil's claims at a public meeting attended by Trebil, and on that same day, the Board prepared a letter formally notifying Trebil of the denial. That letter also informed Trebil of his right to challenge the decision by way of a petition for writ of mandamus filed within 90 days of the date the letter was mailed to him. The letter was sent to both Trebil and his lawyer by mail the next day.

Trebil does not deny he received the letter, and concedes on appeal that he filed his petition for writ of mandamus in the trial court on the *93rd* day after it was mailed to him.

The Board moved for summary judgment on Trebil's petition, arguing the court had no jurisdiction to afford him relief, because the petition had not been filed in compliance with the 90-day limitation contained in section 1094.6. In his opposition to the summary judgment, Trebil noted that he had filed his petition within 90 days of his *receipt* of the Board's notice of decision, and argued that should be deemed sufficient compliance with the statutory deadline. After considering the arguments from both sides, the court granted the motion, and judgment was entered against Trebil.

DISCUSSION

Sections 1010 through 1013a specify the manner in which written notices may be served in civil litigation. Specifically, section 1011 addresses how notices may be served by personal delivery, and section 1012 provides that notices may also be served by mail.

Section 1013, subdivision (a) provides in pertinent part that "[i]n case of service by mail, the notice or other paper shall be deposited in a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service, in a sealed envelope, with postage paid, addressed to the person on whom it is to be served, at the office address as last given by that person on

any document filed in the cause and served on the party making service by mail; otherwise at that party's place of residence. The service is complete at the time of the deposit, *but any period of notice and any right or duty to do any act or make any response within any period or on a date certain after the service of the document, which time period or date is prescribed by statute or rule of court, shall be extended five calendar days, upon service by mail, if the place of address and the place of mailing is within the State of California.*" (Italics added.)

The statutory time period at issue in this case is found in section 1094.6. Section 1094.6 specifies that when a party seeks to challenge the decision of an administrative body through a petition for writ of mandate authorized by section 1094.5, subdivision "(b) [a]ny such petition *shall be filed not later than the 90th day following the date on which the decision becomes final.*" It goes on to state that in cases such as this, where a written decision or findings were required, the administrative decision "is final for purposes of this section *upon the date it is mailed* by first-class mail, postage prepaid, including a copy of the affidavit or certificate of mailing, to the party seeking the writ." (Italics added.) Section 1094.6 expressly prohibits any extension of that 90-day period based upon section 1013: "*Subdivision (a) of Section 1013 does not apply to extend the time, following deposit in the mail of the decision or findings, within which a petition shall be filed.*" (Italics added.)

Of course, we are bound by the statute's provision specifically stating that section 1013 is inapplicable to the 90-day time limitation set forth therein. "[O]ur first task in construing a statute is to ascertain the intent of the Legislature so as to effectuate the purpose of the law. In determining such intent, a court must look first to the words of the statute themselves, giving to the language its usual, ordinary import and according significance, if possible, to every word, phrase and sentence in pursuance of the legislative purpose." (*Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987))

43 Cal.3d 1379, 1386-1387.) In this case, the Legislature could not have made its intention any more clear: Section 1013 cannot be applied to extend the 90-day deadline.

Despite that clear language, Trebil contends the provision should not be enforced, because it is “inconsistent” with section 1013’s general rule allowing for such extensions. It is not. To the contrary, section 1013 itself provides that exceptions will be made to its general rule: “This extension applies in the absence of a specific exception provided for by this section or other statute or rule of court.” (§ 1013, subd. (a).) Section 1094.6 creates just such an exception. The statutes are thus entirely congruent in their application, and reflect the Legislature’s decision to extend time limits in certain cases where notice is given by mail rather than personal delivery, but not in others.

Ultimately, Trebil’s argument comes down to his question, “[W]hat is the legislative reason why these type [*sic*] of proceedings are specifically excluded from the 5 day safeguard of [§] 1013 and 1013a?”³ That is not a question we can answer. Where the Legislature’s intent is clear, as it is here, its reasoning is not subject to judicial review.

However, we can note this: in cases such as this, where the administrative decision was required to be in writing, section 1094.6 actually ties the finality of that decision to the date it is *mailed*. The statute makes no provision for personal delivery of the decision. Thus, it would make no sense to extend the writ of mandate deadline an additional five days on the ground that the notice which is required by statute to be mailed was, in fact, mailed.

³

Section 1013a specifies the requirements for a valid proof of service by mail.

The judgment is affirmed. The Board is to recover its costs on appeal.

BEDSWORTH, ACTING P. J.

WE CONCUR:

O'LEARY, J.

MOORE, J.